BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Telefónica Larga Distancia	)	
De Puerto Rico, Inc.	)	**WCB Docket No. 06-1**
	)	
Petition for Expedited Declaratory Ruling	)	
Regarding Section 253 of the Communications	)	
Act of 1934, as amended	)	
	)	

OPPOSITION OF THE TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

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Summary

The Telecommunications Regulatory Board of Puerto Rico opposes the Petition for Expedited Declaratory Ruling filed by Telefonica Larga Distancia de Puerto Rico, Inc. ("TLD"). The Board, the Puerto Rico state utility commission for telecommunications matters, is charged with assuring that there is a pro-competitive marketplace for telecommunications in Puerto Rico. On April 6, 2005, Puerto Rico Telephone Company, the Incumbent Local Exchange Carrier on Puerto Rico, filed a revision to its Basic Services Tariff to establish island-wide local calling, in response to the island-wide local calling areas employed by other service providers on Puerto Rico. The Board has established the Single Zone Proceeding, to consider the PRTC tariff filing. The Board's decision in the Proceeding, expected no earlier than March 6, 2005, will consider a number of cost and non-cost issues, including the impact of PRTC's Single Zone Plan on competition, on universal service, on the rights of consumers and other pertinent matters.

In its Petition, TLD raises many of the same arguments it has made in the Board's Proceeding. It argues that approval of the tariff would result in the elimination of the intrastate toll market in Puerto Rico, in violation of Section 253(a) of the Communications Act. TLD believes the Commission may act on its Petition before the Board has taken any action in the Single Zone Proceeding.

The Board strongly believes that it is premature for the Commission to act on the TLD Petition. First, the Board has taken no substantive action on the PRTC tariff filing. Hence, there is no state statute, regulation or legal requirement to preempt. Second, because the establishment of local calling areas is a legitimate state interest and because there is an ongoing state proceeding, the principles of comity require that the FCC abstain from acting until the Board has had a full opportunity to rule. Third, each of the cases TLD relied upon to urge early

action can be easily distinguished from the instant case. In each of those cases, there had been some state action to preempt. Here, there is none.

In addition, the Board argues that the alternative proposed by TLD, preemption after the Board acts, would be procedurally deficient because it would require the Commission to act without a complete record, that is without consideration of the Board's evaluation of the "safe harbor" provisions of Section 253(b).

The Board requests that the Commission dismiss the Petition.

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OPPOSITION OF THE TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

The Telecommunications Regulatory Board of Puerto Rico ("Board"), by its attorneys, hereby submits its Opposition to the Petition for Expedited Declaratory Ruling ("Petition") filed on December 20, 2005 by Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"). The Petition asks the Federal Communications Commission ("FCC" or "Commission") to issue a declaratory ruling that approval by the Board of a provision of the Puerto Rico Telephone Company ("PRTC") new Basic Services Tariff Schedule, known as the "Single Zone Plan," would violate Section 253(a) of the Communications Act of 1934, as amended ("Act") and would therefore be subject to preemption under Section 253(d) of the Act.[1] In the alternative, TLD asks that, if the Board approves or permits the Single Zone Plan to go into effect prior to a ruling on its Petition, the Commission find that such approval is preempted under Section 253. The Board opposes the Petition and requests that it be dismissed.

[1] 47 U.S.C. §253.

I. BACKGROUND

A. The Board

In 1996, recognizing the fundamental changes in telecommunications regulation occurring in the United States, the Legislature of Puerto Rico passed Law 213, the Puerto Rico Telecommunications Act ("Puerto Rico Act") to establish the Board and to endow the Board with the responsibility of ensuring a pro-competitive telecommunications market in Puerto Rico and protecting the rights of consumers. The Puerto Rico Act includes a detailed statement of telecommunications public policy on Puerto Rico, including policies to:

> (f) ensure the availability of the broadest range of competitive possibilities in the offering of telecommunications services and facilities;
>
> (g) promote competition and the use of market forces as key factors in determining the prices, terms, availability and conditions of service . . .
>
> (h) simplify the regulatory process in those situations in which regulation is necessary and fear such regulations to the promotion of the consumer's welfare and to penalize for anti-competitive practices in the telecommunications market . . .[2]

In sum, the Puerto Rico Act has promoted a pro-competitive environment since it was first passed in 1996. Indeed, the Puerto Rico Act provides powers to the Board that are to be consistent with the pro-competitive regime of the FCC:

> All the actions, regulations and determinations of the Board shall be governed by the Federal Communications Act, the public interest and especially by the protection of consumers' rights.[3]

Since its creation, the Board has undertaken major initiatives to inform the Puerto Rico population of telecommunications opportunities, has presided over fourteen interconnection

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[2] Puerto Rico Act, Chapter I, Section 2.

[3] Puerto Rico Act, Chapter I, Section 7.

arbitrations, has approved forty interconnection agreements, has conducted a major proceeding on reducing intrastate access rates, has consistently advocated on behalf of the telecommunications consumers of Puerto Rico and has conducted multiple proceedings related to the protection of a competitive environment in Puerto Rico.[4] Throughout these activities the Board has consistently followed a pro-competitive path. It is entirely unlikely that the Board would depart from its pro-competitive charter in the Single Zone Plan proceeding.[5]

B. The Single Zone Plan

On April 6, 2005, PRTC, the Incumbent Local Exchange Carrier ("ILEC") on Puerto Rico, filed a revision to its Basic Services tariff to establish island-wide local calling.[6] At present, PRTC's tariff provides for 10 local calling areas throughout Puerto Rico.[7] Centennial Puerto Rico License Corp. ("Centennial"), a competitive Local Exchange Carrier ("CLEC"), uses a single local calling area.[8] Providers of voice-over Internet protocol ("VOIP") have also entered the Puerto Rico market with island-wide calling, as has WorldNet Telecommunications, Inc., another CLEC.[9] In addition, pursuant to FCC-determined geographic service areas, all Commercial Mobile Radio Service ("CMRS") providers on Puerto Rico offer island-wide calling. Furthermore, wireline providers, including resellers, offer an island-wide tariff for business customers.

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4 Currently, there are 10 active interconnection agreements in Puerto Rico. TLD, PRTC and all the parties to the Single Zone Proceeding participate in one or more such agreements.

5 The Board takes exception to the implication in the Petition that an economic interest in PRTC held by the government of Puerto Rico could cause the Board to take an anti-competitive position in the Single Zone Proceeding.

6 TLD Petition to Suspend Tariff Implementation, filed at the Board on May 17, 2005, at 1.

7 PRTC Opposition to Petition to Suspend Implementation of Tariff, filed at the Board on May 31, 2005, at 3.

8 *Id.*

9 *Id.*

PRTC's tariff is its latest effort to reduce the number of local calling areas on Puerto Rico. In 2004, in response to competition from CMRS providers, Centennial and others, PRTC reduced its calling areas from 68 to 10. A natural consequence of the reduction of local calling areas has been a diminishing of the intrastate toll market.[10]

C. The Single Zone Proceeding

PRTC's April 6, 2005 tariff revision was the subject of a Petition for Suspension filed by TLD on May 17, 2005. Accordingly, the Board established a proceeding to consider the PRTC tariff filing.[11] Pursuant to the 5th Scheduling Order in the *Single Zone Proceeding*, the Board expects to complete its investigation of both cost-based and non-cost-based issues no later the March 6, 2005. The Board's decision in the *Proceeding*, consistent with its statutory responsibility, will consider a variety of cost and non-cost issues, including the impact of the Single Zone Plan on competition, on universal service, on the rights of consumers, whether the tariff is based on costs, and other pertinent matters. These issues are discussed in the approximately 370 pleadings, motions and other filings in the Proceeding, as well as in the many interrogatories and other discovery documents among the parties.

In the *Single Zone Proceeding*, PRTC argues that its tariff revision is necessary to compete in the Puerto Rico market, where consumers have indicated their preference for island-

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[10] It should also be noted that generally the intrastate toll market within the United States has been rapidly diminishing. According to *Trends in Telephone Service*,, a Report published by the Industry Analysis and Technology Division of the FCC Wireline Competition Bureau, between 1998 and 2003, intrastate toll revenues declined by over 33%, from $34,699,000,000 to $23,160,000,000. See *Trends in Telephone Service*, April 2005, Table 9-2.

[11] *TLD v. PRTC*, Case Nos. JRT 2005-Q-0121, JRT 2005-Q-128, JRT-2003-Q-0297, JRT 2004-Q-0068. ("*Single Zone Proceeding*" or "*Proceeding*"). TLD's Petition was consolidated with a similar petition and complaints filed by WorldNet Telecommunications Inc., Sprint Communications Co. L.P. and AT&T of Puerto Rico, Inc. This proceeding is of utmost importance to all participants in the market, the consumers, telecommunications carriers, Legislators, Municipalities, Mayors, the Governor and to advocacy groups representing industry, commerce and consumers.

wide calling.[12] It posits that the revised tariff will benefit consumers, harmonize rates, and allow PRTC to compete with Centennial, wireless service providers and VOIP providers.[13] In response to TLD's argument that the revised tariff will result in the elimination of TLD from the intra-island market, PRTC states that market trends, and not PRTC, are causing this result.[14] PRTC also argues that TLD can – and should – compete with PRTC in the local calling market, as have Centennial, WorldNet and other wireless carriers.[15]

For its part, TLD repeats many of the arguments presented here. While recognizing the authority of the Board to define local calling areas, TLD argues that PRTC's revised tariff would not promote competition or benefit the consumers of Puerto Rico.[16] TLD also argues that the revised tariff would not benefit TLD because TLD has significantly invested in new equipment to compete in the intra-island market.[17] TLD instead maintains that the Board should strive to preserve the intra-island market so that TLD can continue to flourish.[18]

D. The TLD Petition

In its Petition, TLD argues that approval of the tariff would result in the elimination of the intrastate toll market in Puerto Rico, in violation of Section 253(a) of the Communications Act. Section 253(a) provides:

> No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the

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12 PRTC *Opposition to Petition to Suspend Implementation* of Tariff, filed at the Board on May 31, 2005, at 3

13 *Id.* at 6-7, 11-21.

14 *Id.* at 3, 8.

15 *Id.* at 9-11.

16 TLD Petition to Suspend Tariff Implementation, filed at the Board on May 17, 2005, at 7-8, 11-19.

17 *Id.* at 9-10.

18 *Id.* at 7-11.

> ability of any entity to provide interstate or intrastate telecommunications service.[19]

TLD believes that, because the PRTC Single Zone Plan is mandatory – "all customers subscribing to local service with PRTC will be required to use PRTC for all intrastate calling", it is anticompetitive.[20] Furthermore, TLD apparently believes that there is an "almost insurmountable" barrier to entry into the local exchange market in Puerto Rico.[21]

TLD also argues that the Single Zone Plan implicates other detrimental impacts on competition, such as slamming, impermissible tying arrangements, denial of dialing parity and non-discriminatory access and abuse of federal universal service and Lifeline programs.[22]

Moreover, TLD believes that approval of the Single Zone Plan does not fall within any of the "safe harbor" reservations of state authority under Section 253(b). That Section provides:

> Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure that continued quality of telecommunications services and safeguard the rights of consumers.[23]

Finally, TLD argues that the Commission has jurisdiction to issue the requested declaratory ruling, even before the Board has taken any action. TLD quotes the Commission, in preempting the Arkansas Telecommunications Regulatory Reform Act, as finding that doctrines of standing and ripeness do not apply to administrative agencies.[24] Further, TLD argues that the

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19 47 U.S.C. §253(a).

20 Petition at 14-15 (emphasis in original).

21 *Id.* at 17-18.

22 *Id.* at 19-24.

23 47 U.S.C. §253(b).

24 Petition at 27 (citing *In re American Communications Services, Inc.*, 14 FCC Rcd. 21579 (1999)).

Commission has found it appropriate to adjudicate a petition for declaratory ruling, even where there is no legally binding law.[25]

II. ARGUMENT

A. IT IS PREMATURE FOR THE FCC TO TAKE ANY ACTION ON THE TLD PETITION

1. There Is No State Action To Preempt

Section 253 allows the Commission, after notice and opportunity for public comment, to preempt the enforcement of any statute, regulation or legal requirement that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. In this case, however, there is no statute, regulation or legal requirement to preempt. The Board has, simply, not ruled on the PRTC Single Zone Plan. TLD asks that the FCC preempt a future act. Clearly that is not contemplated by Section 253; the Communications Act amendments did not provide the FCC with a working crystal ball.

TLD argues that the phrase "statute, regulation or legal requirement" is intended to be construed quite broadly.[26] Indeed, TLD argues that the Commission has held that state commission approval of a tariff provision constitutes a "legal requirement" for purposes of Section 253.[27] Here, however, there is no *approval* of a tariff provision. Indeed, there is no statute, regulation or legal requirement to preempt.

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[25] Petition at 29 (citing *Telerent Leasing Corp*, 45 FCC 2d. 204 (1974), *aff'd N.C. Util. Commission v. FCC* 537 F.2d 787 (1986)).

[26] Petition at 12.

[27] *Id.* (citing *In re Pub. Utils. Comm'n of Texas*, 13 FCC Rcd 3460, 3561 (1997)). We note that in this case, the Commission concluded that approval of a tariff provision constitutes a legal requirement "since [the approval] has been interpreted and applied through the recent Texas Commission decisions approving the Arbitration Award." *Id.* at 3561. In other words, approval of a tariff provision, standing alone, might *not* meet the test for a legal requirement.

Moreover, there is no basis to predict what the Board will do. The PRTC tariff filing has been the subject of considerable debate, and controversy, not only before the Board, but also in the media, in the legislature and on the street corner. The Board is well aware of the importance of the Single Zone Plan and, until hearings have been completed and the legal cases set forth, is keeping an open mind.

Until the Board acts there is no State action for the FCC to preempt.

2. The Board Should Be Given An Opportunity To Rule

The establishment of local calling areas is a legitimate state interest and has historically been the province of state public utility commissions.[28] Indeed, State commissions, like the Board, are specifically charged by the FCC with "determine[ing] what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs."[29]

In particular, the Board's authority to settle upon local calling areas for the ultimate benefit of the consumers in Puerto Rico was affirmed by the United States District Court for the District of Puerto Rico where the court affirmed the Board's resolution of a dispute involving local calling areas and confirmed that "the Board continues to have authority to define 'local' or

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[28] A local calling area consists of one or more telephone exchanges and is an area within which subscribers can place calls without incurring any additional charge over their regular monthly service charge. *See United States v. Western Electric*, 569 F. Supp. 990, 1003 n.59 (D.D.C. 1983). Local calling areas are established by a state regulatory commission. *Id.* at 1002 n.54.

[29] *In re Implementation of Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd 15449 at ¶1035 (1996). *See also Global NAPS, Inc. v. Verizon New England, Inc.*, 327 F. Supp. 2d 290, 298 (D. Vt 2004) (confirming that "the historical practice of allowing state commissions to define local service areas" was not altered by any recent FCC authority); *Union Tel. Co. v. Qwest Corp.*, 2004 U.S. Dist. LEXIS 28417, *4 (D. Del. May 11, 2004) ("wireline local calling areas are established by or subject to the approval of state commissions"); *Michigan Bell Tel. Co. v. Climax Telephone*, 121 F. Supp. 2d 1104, 1111 (W.D. Mich. 2000) ("The quoted language from the First Report and Order indicates that, consistent with historical practice, state commissions are to determine local calling areas").

'telephone exchange' service areas and that the Board's designation of local calling areas is a sound exercise of its authority.[30] The court relied on the *Global NAPS* case and ample FCC precedent making clear that the issue of local calling areas is an issue for state commissions:

> We also find instructive the finding in a recent arbitration in Virginia in which the FCC reiterated that "state commissions have authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for those areas where the LEC's service areas do not overlap." The FCC later reaffirmed this power stating that "state commissions have the authority to define the local calling area as they see fit."[31]

Given that the definition of local calling areas is a legitimate state interest, traditionally carried out by state public utility commissions, the principles of comity require that the FCC abstain from acting until the Board has had a full opportunity to rule. Comity is a

> proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.[32]

Although the *Younger* Doctrine, in which federal courts abstain from interfering in ongoing state court proceedings, is not directly applicable to the FCC, we believe that the principles underlying the *Younger* Doctrine are relevant and should be followed. The interests of comity, federalism, economy and competence underlie *Younger* abstention.[33] These interests also suggest that it would be grossly premature and offensive for the FCC to issue a declaratory

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30 *Puerto Rico Telephone Company, Inc. v. Telecommunications Regulatory Board of Puerto Rico, et al.*, Civil No. 03-1007(SEC), March 30, 2004 (copy attached as Exhibit A).

31 *Id* at 13 (quoting *Petition of WorldCom, Inc.*, 17 FCC Rcd 27,039, 27,307 ¶549 (July 17, 2002); *Joint Application By BellSouth Corporation Order*, 17 FCC Rcd 25828 (Dec. 19, 2002)).

32 *Younger v. Harris*, 401 U.S. 37 (1971).

33 *See Communications Telesystems International v. California Public Utility Commission*, 196 F.3d 1011, 1015 (9th Cir. 1999), *see also Middlesex County Ethics Commission v. Garden State Bar Association*, 457 U.S. 423, 431-32 (1982).

ruling preempting a state statute, regulation or legal requirement that has not yet been promulgated, and may never be.

3. Cases In Which The Commission Took Early Action Can Be Distinguished

In urging the Commission to construe broadly its authority to entertain petitions for declaratory rulings, TLD relies heavily on *In re Am. Commc'ns Servs., Inc* ("ACS").[34] Such reliance is misplaced insofar as it fails to recognize the critical distinction between the fully enacted regulations at issue in *ACS* and the still unpromulgated "regulation" attacked by TLD in this proceeding.

In *ACS*, the Commission was asked to issue a declaratory ruling preempting the Arkansas Telecommunications Regulatory Reform Act of 1997.[35] This legislation had been in place for two years and was in the process of being implemented when the Commission issued its ruling. Indeed, the Commission looked to the state implementation activities for guidance in making its determinations, stating "activities of the Arkansas Commission inform our review of the Arkansas Act",[36] and "shed light on the meaning of some of the provisions at issue."[37] Thus, while reaffirming the principle that the doctrines of standing and ripeness do not apply in administrative proceedings, the Commission in *ACS* nonetheless recognized the necessity of allowing issues to develop significantly at the state level before taking them up for review.[38]

By contrast, in this proceeding the Commission is being asked to issue a declaratory ruling with regard to an unknown "legal requirement" that has not been acted on by the Board.

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34 14 FCC Rcd 21579 (1999).

35 *Ark Code Ann. §§ 23-17-401.*

36 ACS, 14 FCC Rcd. at 21585.

37 *Id.*

38 *Id.* at 21589.

TLD points to the *Telerent* case as support for the proposition that the Commission should exercise its authority to issue a ruling on a proposed, but not yet final, state regulation.[39] Use of *Telerent* for such a proposition, however, is also misguided. In *Telerent*, the Commission found it appropriate to issue a declaratory ruling to clarify unresolved issues that had arisen pursuant to its own previous ruling in *Carterfone*.[40]

More specifically, the Commission in *Telerent Leasing* concluded that actions *that had been taken* by the Nebraska attorney general and North Carolina Utilities Commission had "created uncertainty concerning whether and, if so, to what extent actions we have taken, and policies we have promulgated, in Carterfone and related cases . . . have preempted State action in this area."[41] Amidst such confusion, the Commission concluded a ruling was "appropriate and desirable to remove the uncertainty created by the North Carolina and Nebraska actions – an uncertainty which questions the integrity of Carterfone. . . ."[42] By contrast, in these proceedings TLD requests the Commission to issue a ruling where no state action has been taken at all and, as a consequence, there is still no actual state versus federal conflict. A ruling under such circumstances would be decidedly premature.

Finally, TLD's argument that the Commission should act on its Petition simply because the Commission has previously "see[n] no reason to wait until enforcement actions have begun",[43] is unavailing. Framing the agreement in such a manner, *i.e.*, the Commission should act unless there are reasons not to, TLD inverts the logic of previous cases in which the

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39 *In re Telerent Leasing Corp.*, 45 FCC 2d 204 (1974), *aff'd, N.C. Utils. Comm'n v. FCC*, 527 F.2d 787 (1976).

40 *See Id.* at 207 ("Our proceeding herein is concerned with the pending and unresolved basic issues now before us as to whether, and to what extent, there is a public need to go beyond what we ordered in Carterfone. . . .").

41 *Id.* at 204.

42 *Id.* at 207.

43 Petition at 29.

Commission has issued pre-enforcement declaratory rulings. These cases suggest the Commission should *not* act unless there are affirmative reasons to do so, *i.e.*, state agreements and/or regulations that suggest a conflict already exist or are imminent.[44]

In sum, the TLD Petition offers no good reason why the Commission should issue a declaratory ruling *before* the Board has acted on the PRTC Single Zone Plan. First, there is no state action for the Commission to preempt. Second, the principles of comity require that the Commission abstain from interfering in an ongoing state proceeding where the state has a legitimate state interest. Finally, the cases cited by TLD to demonstrate that the Commission has broad authority to issue a declaratory ruling before state rules have been applied or enacted all show that some state action was taken before a declaratory ruling was issued. Quite simply, there is nothing to preempt in this case and the Commission should not allow TLD's sly attempts to usurp the Board's authority to succeed.[45]

B. TLD'S ALTERNATIVE IS PROCEDURALLY DEFICIENT

1. FCC Cannot Act Without A Complete Record

Perhaps recognizing the futility of asking the FCC to preempt what does not exist, TLD offers an alternative:

> if the Puerto Rico Board approves the Single Zone Plan (including permitting the Single Zone Plan to go into effect) prior to a ruling on this Petition, TLD requests that the Commission find the approval of the Single Zone Plan is preempted under Section 253.[46]

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[44] *See, e.g., In re Minnesota*, 14 FCC Rcd 21697 (preempting state agreement that had not yet been implemented); *In re Operator Servs. Provider of Am.*, 6 FCC Rcd 4475 (1991) (acting on a petition for a declaratory ruling on grounds that the Communications Act precluded Tennessee statute's efforts to regulate interstate and foreign communications).

[45] TLD's intentions are clear: "Indeed, it is possible that the issuance of the declaratory ruling in a timely manner may make a preemption unnecessary because the Puerto Rico Board may understand the futility of approving the Single Zone Plan." Petition at 27.

[46] Petition at 1-2.

TLD is mistaken if it is suggesting that the FCC can preempt based on the record in this proceeding. If preemption were based on a record developed prior to the action being preempted, Section 253(d) would be violated. Section 253(d) states:

> If, *after notice and an opportunity for public comment*, the Commission determines that a State or local government has permitted or imposed any statute, regulation or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation or legal requirement to the extent necessary to correct such violation or inconsistency.[47]

The purpose of requiring notice and public comment, before reaching a decision on preemption is, of course, to ensure that the Commission has a complete record, with all parties having been given the opportunity to be heard on all relevant matters. For that reason the record being developed now will be insufficient for reliance by the Commission. *This record will contain nothing concerning the Board's decision.*

It is very clear that comments and reply comments will have been submitted prior to the Board's action, which will not be taken until, at the earliest, March of 2006. Consequently, to develop a record on the actual State "statute, regulation or legal requirement" at least one additional round of comments will be necessary. Once again, it seems that TLD's request for declaratory ruling is premature.

2. The Safe Harbor Provisions Must Be Considered

To understand why a second round of comments would be necessary, one need only consider how the Section 253 process is supposed to work. First, *after* the enactment of a state or local statute, regulation or legal requirement, the FCC considers whether it may prohibit or have the effect of prohibiting the ability of any entity to provide any intrastate or interstate

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[47] 47 U.S.C. §253(d) (emphasis added).

telecommunications service. Then, if the finding is affirmative, the FCC considers whether the state action is protected by the exclusions provided in Section 253(b) or (c). Preemption is not warranted if the state action falls into any one of these "safe harbors."

Of particular interest in this case is the safe harbor exclusion found in Section 253(b):

> Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers.[48]

These factors – universal service, public safety and welfare, quality of service and consumer rights – are all considerations the Board has the authority, and the obligation, to consider in the Single Zone Proceeding. Yet TLD asserts, without any basis, that approval of the Single Zone Plan would violate 253(a) and "cannot be saved by Section 253(b)."[49]

It is inconceivable that TLD could know whether a State action, *which has not occurred*, could be "saved" by Section 253(b). Rather, TLD is jumping to conclusions, with no evidence, and making premature arguments, with no logic.

If the Board were to approve the Single Zone Plan – by no means a surety – it is entirely possible that it would do so by using the reservations of State authority under Section 253. In that case, and at that time, it may be appropriate to consider the worthiness of those reservations. Such consideration will, at the very least, require additional filings. Thus it would be not only premature for the Commission to act on TLD's alternative, it would be procedurally improper.

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[48] 47 U.S.C. §253(b).

[49] Petition at 25.

III. CONCLUSION

Because it is premature and procedurally improper for the Commission to consider the TLD Petition, the Telecommunications Regulatory Board of Puerto Rico urges its immediate dismissal.

Respectfully submitted,

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